

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

DOMINGO JESSE CAMPOS

PETITIONER

vs.

CASE NO. **4:96CR00243 GH**
4:05CV00982

UNITED STATES OF AMERICA

RESPONDENT

ORDER

Petitioner has filed another motion pursuant to 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence on the basis of the Supreme Court's ruling in United States v. Booker, 125 S. Ct. 738 (2005). He contends that his sentence was in violation of his Fifth and Sixth Amendment rights as his sentence was enhanced by facts not found by a jury or admitted by him.

Petitioner was found guilty on October 30, 1997 of one count of conspiracy to distribute and possess with intent to deliver cocaine, and two counts of possession with intent to distribute cocaine. On January 28, 1998, petitioner was sentenced to 360 months with ten years supervised release. The convictions were affirmed on appeal on September 30, 1998. United States v Campos, 163 F. 3d 603 (Table), 1998 WL 673140 (8th Cir. 1998).


Petitioner filed a § 2255 motion on May 29, 2001, which the Court dismissed as untimely on July 27, 2001. The Eighth Circuit Court of Appeals denied the request for a certificate of appealability on January 8, 2002. Petitioner filed the instant petition on July 12, 2005.

Petitioner's motion must be denied. The Eighth Circuit has held that *Booker* is not applicable to cases on collateral review, where the sentence became final before the date *Booker* was decided. Never Misses a Shot v. United States, 413 F. 3d 781 (8th Cir. 2005). Thus, the rule of Booker cannot apply to defendants whose convictions were final before January 12, 2005.

Accordingly, the motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. §

2255 is denied.

IT IS SO ORDERED this 2nd day of February, 2006.


UNITED STATES DISTRICT JUDGE